

**United States Department of Labor
Board of Alien Labor Certification Appeals
Washington, D.C. 20001**

'Notice: This is an electronic bench opinion which has not been verified as official'

Date: July 9, 1997

CASE NO.: 95 INA 461

In the Matter of:

CENTURY ASSESSMENT MEDICAL CLINIC,
Employer,

on behalf of

SHAHID YOUNUS MUHAMMAD,
Alien

Appearance: D. E. Korenberg, Esq., of Encino, California.

Before : Holmes, Huddleston, and Neusner
Administrative Law Judges

FREDERICK D. NEUSNER
Administrative Law Judge

DECISION AND ORDER

This case arose from a labor certification application that Century Assessment Medical Clinic (Employer), filed on behalf of Shahid Younis Muhammad (Alien), under § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the Act), and the regulations promulgated thereunder, 20 CFR Part 656. The Certifying Officer (CO) of the U.S. Department of Labor at San Francisco, California, denied the application, and the Employer and the Alien requested review pursuant to 20 CFR § 656.26.¹

Under § 212(a)(5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there

¹The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

STATEMENT OF THE CASE

On May 4, 1993, the Employer filed for labor certification on behalf of the Alien to fill the job of Medical Researcher. AF 116. The job academic educational requirements were a Doctor of Medicine or its equivalent in the field of medicine, with the additional requirement that the applicant must be available to work overtime as needed and that the worker's training "must have provided in-depth knowledge of dermatology." The job duties were described as follows:

Perform research to assist doctor's reports, medical histories and laboratory results. Liaise & assist doctors in medical significance of symptoms & diseases, based upon research. Keep abreast of latest medical research results and utilize medical library to perform medical research. Emphasis on research in dermatology. Note: No direct patient care. Research only.

Notice of Findings. By the Notice of Findings (NOF) issued October 17, 1994, the CO advised that certification would be denied, subject to rebuttal. AF 18. The CO said that the Alien did not possess the required license for the occupation and the work to be performed, which required the job holder to be a licensed physician. 20 CFR § 656.20(c)(7). The CO also said the nature of the position had been mischaracterized by Employer's application. This inference was drawn from the Employer's letter of August 25, 1993, in which (1) it refused to delete the medical degree requirement, and (2) it made admissions revealing that the job required the diagnosis of cases assigned in which the worker would advise doctors of the medical significance of symptoms and the medication needed to treat illnesses, and that the job required knowledge of medical terminology to analyze and evaluate a patient's condition. AF 157.

The NOF directed the Employer to provide convincing evidence that the position described the ETA Part A, and the Employer's August 25, 1993, letter did not require California licensure, noting that in the past this issue had been presented to the Medical Board of California which considered the duties of the position in deciding that the job required a California medical license. Employer's explanation was that the work was that of a medical researcher, and not a physician. In spite of this the Employer had refused, nevertheless, to delete the medical degree requirement.

Rebuttal. On November 8, 1994, Employer's rebuttal said the principal duty of the position consisted of research. AF 52. The Employer contended that the job did not require the worker to provide the doctor with medication. Rather, it involved the study of medical issues in order to enable the doctors to treat patients properly. Employer disagreed with the analysis of the position by the Medical Board of California, relying on a letter by that Board while "evaluating an identically described position as the instant one," where the Board found that the other position did not require a medical license. AF 111.

Final Determination. On December 1, 1994, certification was denied in the CO's Final Determination (FD). AF 47. The CO said both the ETA 750, Part A, and the Employer's letter of August 25, 1993, provided the information reviewed by the Medical Board of California, on which the CO based the finding that a medical license was required for this job. This Employer failed to offer such expert opinion as might have been presented against the CO's NOF findings as to licensure, and it did not request a copy of the Medical Board's analysis before submitting its rebuttal.

The CO observed that a finding in another application which the Employer offered and cited as authority was not controlling in this proceeding. observing that it differed from this case. The CO explained that the instant case also involved the Board's review of the Employer's letter of August 25, 1993, and not just the ETA 750. Certification was denied as the Employer remained in violation of 20 CFR § 656.20(c)(7), and the Employer failed to comply with the requirements of the NOF.

DISCUSSION

20 CFR § 656.20(c)(7) provides that Employer's requirements for the position's terms, conditions and occupational environment must conform to Federal, State or local law. The evidence of the Employer fails to establish that this job conforms to public law, however. The Employer's argument that the facts of this case are identical to a prior case in which it was found that the medical researcher position did not require licensure ignores the fact that the employer hiring for that position did not require a medical degree, only an advanced degree in biology or physiology. Moreover, it is well established that each application for labor certification concerns its own specific facts and issues. For this reason, the "submission of another employer's approved application does not set any precedent to which the CO [or the Board] is bound." **Paralegal Priorities**, 94-INA-117 (Feb. 1, 1995).

The inference that this position is different from the one cited is reinforced by the Employer's letter of August 25, 1993, which disclosed that (1) this job requires the worker to use his

research to make diagnoses in specific cases that are assigned to him by doctors; and (2) the worker will apply his knowledge of medical terminology to analyze and evaluate patients' conditions; and (3) by reviewing patients' records to the worker will provide to the Employer the medical significance of symptoms and of the medication needed to treat such illness. Regardless of whether or not this finding was supported by the Medical Board's findings that licensure is required, it is clear to even a layman that much more than medical research is involved in the position of this worker to whom heavy diagnostic responsibilities would be regularly delegated by various physicians individually charged with the treatment of patients under their professional care.

Although the Employer was fully advised in the NOF of the requirements necessary to rebut the findings of the CO, it did nothing more than reiterate its argument as stated previously. Employer's unsupported assertions that the position does not requires a state medical license clearly are insufficient to rebut the NOF. **Inter-World Immigration Service**, 88 INA 490 (Sept. 1, 1989); **Watkins-Johnson Co.**, 93 INA 544 (Apr. 10, 1993). The

Employer's failure to produce documentation demonstrating that the position at issue does not require California licensure is reason for the denial of labor certification in this job which, the Employer insisted, requires a medical degree and which, the Employer nevertheless admitted in its letter of August 25, 1993, required the worker to render professional medical opinions regarding the medication and treatment of patients.

As we find that certification was properly denied by the Certifying Officer, the following order will enter.

ORDER

The decision of the Certifying Officer denying certification under the Act and regulations is affirmed.

For the Panel:

FREDERICK D. NEUSNER
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.

Sheila Smith, Legal Technician

BALCA VOTE SHEET

CASE NO.: 95-INA-461

CENTURY ASSESSMENT MEDICAL CLINIC, Employer,
SHAHID YOUNUS MUHAMMAD, Alien

PLEASE INITIAL THE APPROPRIATE BOX.

	:	:	:	:
	:	CONCUR	:	DISSENT
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Holmes	:	:	:	:
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Huddleston	:	:	:	:
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Thank you,

Judge Neusner

Date: June 30, 1997.